

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING PUBLIC CONTRACTS AND SUBCONTRACTS WITH AN UNAUTHORIZED ALIEN AND PROHIBITING AN UNAUTHORIZED ALIEN FROM MAKING CERTAIN CONTRACTS WITHIN THE STATE; PROVIDING A PENALTY; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, it is the policy of the United States, as expressed in 8 U.S.C. 1324a, that an employer is prohibited from employing an unauthorized alien; and

WHEREAS, public agencies should take reasonable means to require those with whom they contract and subcontract to comply with federal law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. State and local contractors not to employ or contract with unauthorized aliens. (1) A person who contracts with a public agency may not, for the purposes of fulfilling the person's contractual obligations with the public agency, knowingly employ or contract with:

(a) an unauthorized alien, as defined in 8 U.S.C. 1324a(h)(3), or with a person who the contractor or subcontractor should have known was an unauthorized alien; or

(b) another person who knowingly employs an unauthorized alien or a person who the employer or contractor should have known was an unauthorized alien.

(2) A person who contracts with a public agency or the subcontractor of a person who contracts with a public agency who violates subsection (1) is in material breach of the contract. In the event of a breach, the public agency may pursue all legal contract remedies, including but not limited to terminating the contract or subcontract. In addition, the public agency may prohibit the contractor or subcontractor from bidding on a contract or contracting with the public agency for a period not to exceed 3 years.

(3) A contract of a public agency must expressly state the requirements of this section.

(4) A public agency terminating a contract pursuant to subsection (2) shall report the termination to the legislative audit division, provided for in 5-13-301, at the end of the calendar year in which the contract was terminated. The report must state the number and type of contracts terminated and the number of unauthorized

1 aliens employed by the person contracting with the public agency or another person contracting with that person.

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3 **NEW SECTION. Section 2. Employment contract with unauthorized aliens prohibited --**
4 **misdemeanor.** (1) An unauthorized alien, as defined in 8 U.S.C. 1324a(h)(3), may not:

5 (a) make a contract for employment in this state; or

6 (b) contract, as an independent contractor, with a person for the purposes of fulfilling a contract between
7 the person and a public agency, as defined in 18-1-101. Absolute liability, as provided for in 45-2-104, is imposed
8 for a violation of this section.

9 (2) An alien who violates this section is guilty of a misdemeanor and upon conviction shall be punished
10 as provided by 46-18-212.

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12 **NEW SECTION. Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an
13 integral part of Title 18, chapter 1, and the provisions of Title 18, chapter 1, apply to [section 1].

14 (2) [Section 2] is intended to be codified as an integral part of Title 28, chapter 2, and the provisions of
15 Title 28, chapter 2, apply to [section 2].

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17 **NEW SECTION. Section 4. Applicability.** [This act] applies to a contract entered into on or after
18 October 1, 2009.

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